



SENATE JUDICIARY  
Exhibit No. 8  
Date 2-6-07  
Bill No. SB 389

American Civil Liberties Union  
of Montana  
Power Block, Level 4  
PO Box 1317  
Helena, Montana 59624  
406-443-8590  
www.aclumontana.org

Tuesday, February 06, 2007  
Testimony SB 389

Chairman Laslovich, members of the Committee,

For the record, my name is Scott Crichton and I am the Executive Director of the ACLU of Montana. On behalf of our 2,500 members, I submit this testimony in opposition to SB 389

The substance of this bill is fundamentally flawed. While it might appear to make sense on the surface, closer examination should convince you to not support SB 389. State legislatures are not and should not be subject to federal direction.

The federalization of police powers, in this instance local police carrying out duties reserved for federal agents, is not in the state's self interest. Local law enforcement is already over taxed and underpaid. We expect them to keep the peace. We expend considerable time and money in training them in techniques of community policing. To do their jobs effectively they are expected to be accepted by the communities they serve. They already are expected to enforce an ever growing number of municipal, city, county and state ordinances.

When the City of Helena adopted in December 2004 a resolution to protect civil liberties it recognized that the preservation of civil rights and liberties is essential to the well-being of a democratic society; and that various federal policies adopted since September 11, 2001, including certain provisions in the USA PATRIOT Act (Public Law 107-56) and related executive orders, regulations and actions, jeopardize fundamental rights and liberties.

Among other provisions in that resolution, Helenans affirmed their support of policing procedures currently followed by the City of Helena, including how the City refrains from using city resources to enforce federal immigration laws which are the responsibility of the federal government, except when an alien has been detained or arrested on suspicion of a criminal offense.

The ACLU currently has a case on appeal to the 9<sup>th</sup> Circuit known as Habeeb v. Castlloo. Our client Abdulameer Habeeb is a refugee from Iraq lawfully admitted to the United States. In April 2003, he was taking an Amtrak train from Seattle to Washington DC that stopped in Havre, Montana. Officers from the bureau of Customs and Border Protection (CBP) stopped and questioned Habeeb about his immigration status. When they learned that he was from Iraq but had not reported for "special registration" under the NSEERS program, they arrested him and placed him into deportation proceedings. The problem: refugees are not required to report for special registration. After five days in custody, Mr. Habeeb was finally released.

ACLU of Washington, National Immigration Project, and ACLU of Montana brought Bivens suit (section 1983 damages suit against law enforcement officers). Officers represented by US Attorney's office moved for summary judgment claiming officers were immune from suit because they acted lawfully. We have appealed the ruling of the presiding Judge who granted the summary judgment motion, holding essentially that racial profiling used to arrest someone under a law that does not apply to them means the Border Patrol acted lawfully. The case is proceeding towards a settlement.

At issue in that case is the fact that Custom and Border Protection Agents who ostensibly are trained in the intricacies of federal immigration law did not themselves understand the laws they are expected to enforce. This bill invites racial profiling and pretense stops by police of people of color.

The vagueness of provisions in SB 389 ought to concern us all. Who will provide training for local police to determine who is in violation of which elements of very complicated and sometimes contradictory federal immigration law? If you were in Mr. Habeeb's shoes, what would you consider a reasonable period of time to be detained?

In a 1996 case before the Supreme Court of the United States, Jay PRINTZ, Sheriff/Coroner, Ravalli County v. UNITED STATES (521 U.S. 898, 117 S.Ct. 2365), the Court dealt with a different issue than immigration. Sheriff Prinz sought to enjoin enforcement of provisions of Brady Handgun Violence Protection Act imposing requirements on chief law enforcement officers (CLEO). While the issues are different, the underlying principles are not.

In the Court's 5-4 decision, Justice Scalia wrote for the majority a treatise worth of your review, in which he concludes, "We held in *New York* that Congress cannot compel the states to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty. Accordingly, the judgment of the Court of Appeals for the Ninth Circuit is reversed."

Justice Scalia goes further to write, "The separation of the two spheres is one of the Constitution's structural protections of liberty. The power of the Federal Government would be augmented immeasurably if it were able to impress in its service—and at no cost to itself—the police officers of the 50 states."

We have seen enough Abuse of Power of late. SB 389 extends an invitation for more federal police power and for further imbalances in our constitutional system of checks and balances. For these reasons, and the many others cited today, I encourage you to vote no on SB 389.